

REMARKS

Applicant has carefully studied the Office Action of July 28, 2004, and offers the following remarks to accompany the above amendments in response thereto.

Applicant initially adds new claims 41-44 which recite the wireless nature of the present invention. Support for these new claims can be found in paragraphs 0002 and 0003 of the specification. No new matter is added. In contrast, the reference of record (Weinstein) does not disclose a wireless system. Weinstein is directed to a computer network circa 1970, and as such, does not contemplate a wireless network. Applicant has searched the reference and finds no teaching or suggestion therein that Weinstein is suitable for use in a wireless system. Since Weinstein does not teach or suggest a wireless system, Weinstein does not anticipate or render obvious new claims 41-44.

Applicant further amends claims 1 and 21 to address the rejection under 35 U.S.C. § 112. Applicant has inserted the requested "not". Applicant requests withdrawal of the 35 U.S.C. § 112 rejection of claims 1 and 21 at this time.

Applicant appreciates the indication by the Patent Office that claims 6, 7, 9, 11, 16, 17, 19, 26, 27, 31, 36, 37, and 39 are allowable. However, in light of the arguments presented herein, Applicant respectfully opines that it is unnecessary to amend the claims at this time.

Claims 8 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinstein in view of Official Notice. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element is located in the modified reference or combination of references. MPEP § 2143.03. If the Patent Office cannot establish obviousness by showing every element in a properly modified reference, then the claim is allowable, and the Applicant is entitled to a patent.

The Patent Office admits that Weinstein does not teach sending data from one transmitting station to more than one receiving station, but takes Official Notice that the usefulness of providing a computer network for allowing a computer to communicate with various different computers at various different times was well known. Based on this assertion, the Patent Office opines it would have been obvious to modify Weinstein to apply Weinstein's data transmission terminal to communicate at other times, with other data receiving terminals having the same construction as Weinstein's disclosed data receiving terminal. However, this communication scheme is not what is recited in claims 8 and 28. Claims 8 and 28 recite

“wherein packets in the sequence of packets are transmitted to different users and the subpackets associated with the packet for retransmission to a select user are only punctured into ones of the packets to be transmitted to the select user.” Nowhere in the claim is there any “time” element, such as that discussed by the Patent Office. Likewise, even if Weinstein were modified to communicate at other times with other data receiving terminals, such a modified structure does not show that “subpackets associated with the packet for retransmission to a select user are only punctured into ones of the packets to be transmitted to the select user”, as recited in the claims. To this extent, the modified reference does not teach a claim element. Since the modified reference does not teach a claim element, the Patent Office has not established obviousness for claims 8 and 28. Since the Patent Office has not established obviousness for claims 8 and 28, claims 8 and 28 are allowable. Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 8 and 28 at this time.

Claims 1-5, 10, 12-15, 18, 20-25, 30, 32-35, 38, and 40 were rejected under 35 U.S.C. § 102(b) as being anticipated by Weinstein. Applicant respectfully traverses. For the Patent Office to establish anticipation, the Patent Office must show where each and every claim element is located. Furthermore, the elements of the reference must be arranged as claimed. MPEP § 2131. The requirements set forth in MPEP § 2131 are strict and must be rigorously observed.

Claims 1, 12, 21, and 32 all recite a sequence of packets. While Weinstein is directed to computer transmissions, Weinstein, does not show packets as required under the strict requirements of an anticipation analysis. Weinstein teaches blocks of data and code words, but again, these are not, strictly speaking, packets as recited in the claim. If the Patent Office disagrees, Applicant requests that the Patent Office provide proof that the blocks and code words of Weinstein meet a broad reasonable interpretation of “packet.” Absent such proof, the Patent Office has not provided evidence that Weinstein teaches packets. Since Weinstein does not teach the packets recited in the claim, a § 102 rejection is improper. Applicant makes this point not to be facetious, but to change the posture of the rejection. Applicant has many more procedural options if the rejection is not an anticipation rejection. Since the reference does not show a recited claim element, the anticipation rejection is not proper, Applicant requests withdrawal of the 35 U.S.C. § 102 rejection of claims 1, 12, 21, and 32 at this time.

Applicant respectfully notes that claims 2-5, 10, 13-15, 18, 30, 22-25, 30, 33-35, 38, and 40 depend from claims 1, 12, 21, and 32, and are not anticipated at least for the same reason.

That is, Weinstein does not, as is required in an anticipation analysis, show packets. Applicant requests withdrawal of the 35 U.S.C. § 102 rejection of claims 2-5, 10, 13-15, 18, 30, 22-25, 30, 33-35, 38, and 40 at this time.

Applicant requests reconsideration of the rejections in light of the amendments and remarks presented herein. Weinstein does not teach or suggest the partial puncture retransmission scheme of the present invention in a wireless network, nor does Weinstein teach the multiple recipient retransmission scheme. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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Date: September 28, 2004
Attorney Docket: 7000-129

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